**S.B. CIVIL WRIT PETITION NO. 5737/2005**

Suresh Shilpkar Vs. State of Rajasthan & Ors.

DATE OF ORDER : 26.04.2006

**HON'BLE MR. GOVIND MATHUR, J.**

Mr. Sandeep Shah, for the petitioner.
Mr. B.L. Tiwari, Dy. Govt. Advocate.

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While exercising powers under Rule 13 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 the District Education Officer (Secondary Education), Chittorgarh by an order dated 26.10.2004 placed the petitioner under suspension contemplating disciplinary proceedings. Validity of the order aforesaid is questioned by the petitioner alleging to be without jurisdiction. It is contended by counsel for the petitioner that powers under Rule 13 of the Rules of 1958 to place an incumbent under suspension can be exercised by the appointing authority, by an authority to whom the appointing authority is subordinate or by any other authority empowered by the Government in that behalf. The appointing authority of the petitioner is Dy. Director of Education and not the District Education Officer. According to counsel for the petitioner the District Education Officer (Secondary Education), Chittorgarh being subordinate to the appointing

authority and also being not empowered by the Government to place an Upper Division Clerk under suspension the order impugned dated 26.10.2004 is without jurisdiction.

A reply to the writ petition has been filed on behalf of the respondents wherein while admitting that the appointing authority of the petitioner is Dy. Director Education and not the District Education Officer it is urged that the order of suspension dated 26.10.2004 is valid as a confirmation from the appointing authority was sought with regard to suspension of the petitioner under the order impugned as provided under proviso to sub–rule (1) of Rule 13 of the Rules of 1958 and the same has been granted. By the order dated 7.4.2006 the respondents were directed to satisfy the Court as to whether the Government has empowered the District Education Officer to exercise powers under Rule 13 of the Rules of 1958 to place an Upper Division Clerk under suspension. In response thereto learned Dy. Govt. Advocate has shown me a copy of the order dated 20.12.2005 whereby the Deputy Director Education (Secondary), Udaipur Zone, Udaipur confirmed the placement of the petitioner under suspension by the order dated 26.10.2004. According to counsel for the respondent–State though the order impugned dated 26.10.2004 was passed by an authority

subordinate to the appointing authority of the petitioner but the same being confirmed in accordance with the proviso to sub–rule (1) of Rule 13 of the Rules of 1958 by the appointing authority the order dated 26.10.2004 cannot be termed as order without jurisdiction.

Heard counsel for the parties.

Rule 13(1) of the Rules of 1958 reads as under:

> "13(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the government in that behalf may place a Government servant under suspension.
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> (a) where a disciplinary proceedings against him is contemplated or is pending, or
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> (b) Where a case against him in respect of any criminal offence is under investigation or trial.
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> Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made."

Under Rule 13 of the Rules of 1958 a government servant can be placed under suspension by the appointing authority, by an authority to whom the appointing authority is subordinate or by

an authority empowered by the Government of Rajasthan to place a government servant under suspension. If government empowers an officer subordinate to the appointing authority to exercise power to place a government servant under suspension, then while exercising such a power the officer empowered is required to forward a report forthwith to the appointing authority mentioning circumstances in which such power was exercised.

The order impugned dated 26.10.2004 is admittedly not passed by the appointing authority of the petitioner or by the authority to whom the appointing authority of the petitioner is subordinate. The order impugned dated 26.10.2004 is also not passed by the authority empowered by the Government of Rajasthan to place an Upper Division Clerk under suspension. The contention of the counsel for the respondent that in accordance with the proviso to sub–rule (1) of Rule 13 of the Rules of 1958 a subordinate officer to the appointing authority can also place a government servant under suspension subject to its confirmation by the appointing authority is having no merit for the reason that the proviso to sub–rule (1) to Rule 13 of the Rules of 1958 comes into action only if the Government empowers an authority subordinate to the appointing authority to place a government

servant under suspension. If the subordinate officer is not empowered by the Government to place a government servant under suspension then the proviso to sub–rule (1) to Rule 13 of the Rules of 1958 is having no application. The proviso to sub–rule (1) of Rule 13 is required to be read inconsonance to the main provision. If the author of the order of suspension lacks jurisdiction then the confirmation sought under the proviso is of no consequence.

In the instant matter the respondents failed to produce any order empowering the District Education Officer (Secondary Education) to place Upper Division Clerk under suspension, as such, the subsequent confirmation by the Dy. Director is of no consequence. The order dated 26.10.2004, therefore, is illegal and the same deserves to be quashed.

Accordingly, this petition for writ is allowed. The order dated 26.10.2004 is quashed. The petitioner is declared entitled for all the consequential benefits flowing as a consequence of quashing the order dated 26.10.2004. No order as to cost.

**(GOVIND MATHUR),J.**

**j.goyal**